



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

March 1, 1955

Hon. Dallas J. Matthews, Director
Texas National Guard Armory Board
Capitol Station
Austin, Texas

Opinion No. MS-179

Re: Construction contracts
for armories.

Dear General Matthews:

You have requested an opinion as to whether the provisions of Article 5159a, Vernon's Civil Statutes, prescribing the wage scale applicable to the construction of public works on behalf of the State and political subdivisions are applicable to the construction of armories by the Texas National Guard Armory Board let through the State Board of Control pursuant to a contract between the State of Texas and the United States. In answering this question we deem it advisable to set out the following background:

In 1952 the United States Government proposed to the Texas National Guard Armory Board alternative contracts covering construction of armory facilities to be erected in the State of Texas. The Texas National Guard Armory Board accepted the option which provided that the State of Texas would contract for all work, material and/or services required for a construction of facilities for armories, and in October, 1952 entered into such agreement.

Paragraph 3 of Article I of the agreement provided:

"ARTICLE I. The State agrees: . . . 3. To execute construction or supply contracts under regulations, procedures, and policies in current use by the Government insofar as these do not conflict with the requirements of State law. All such contracts, subcontracts, and change orders shall be subject to prior approval of the Government. . . ."

Pursuant to this agreement the Texas National Guard Armory Board has entered into numerous contracts for the construction of armories in compliance with the provisions of Article 5890b of Vernon's Civil Statutes.

Subdivision (b) of Section 2 of Article 5890b authorizes the Texas National Guard Armory Board:

"(b) To enter into contracts in connection with any matter within the objects, purposes or duties of the Board. It shall be the duty of the State Board of Control of the State of Texas to, for and on behalf of the said Armory Board, supervise the taking and tabulation of bids for work approved for bids by the said Armory Board and the construction under contracts executed by said Armory Board and the purchase of furniture and equipment such as is desired by the said Armory Board."

According to your request, "Under the date of February 21, 1955, the Texas National Guard Armory Board received a memorandum advising that the Solicitor of the Department of Labor had ruled that the Federal Davis-Bacon Act and the Eight-hour Law applied to construction of armories. This message further advised that prior to the awarding of any contract for the construction of such facilities, it would be necessary for the contracting party to obtain a predetermination of wage rates for all classes of mechanics and laborers from the Department of Labor."

The wage rate prescribed in Article 5159a of Vernon's Civil Statutes, applies to:

"... all laborers, workmen and mechanics employed by or on behalf of the State of Texas, or by or on behalf of any county, city and county, city, town, district or other political subdivision of the State engaged in the construction of public works, exclusive of maintenance work. . . ."

It is our opinion that the provisions of Article 5159a apply to the construction of armories by the Texas National Guard Armory Board since it is a contract entered into by an agency of the State of Texas pursuant to the laws of this State for the construction of property belonging to the State of Texas. We are supported in this opinion by the agreement entered into between the Department of Army and Air Force National Guard Bureau and the State of Texas acting by and through the Texas National Guard Armory Board, a State agency.

Yours very truly,

John Reeves
Assistant Attorney General

JR:cs:egw